UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,213	10/17/2001	Johan Renes	5117US	5776

24247 7590 08/19/2011

TRASKBRITT, P.C.
P.O. BOX 2550
SALT LAKE CITY, UT 84110

EXAMINER	
NGUYEN, TRAN N	

ART UNIT	PAPER NUMBER
3626	

NOTIFICATION DATE	DELIVERY MODE
08/19/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

DETAILED ACTION

Response to Amendment

In the amendment filed one 07/25/2011, Applicant amends claim 9 as follows:

> gathering data about two or more natural persons entering into a cohabitation agreement between people who are not married;

This amendment raises new issues that would require further consideration and search.

Therefore, this amendment is hereby denied entry.

Response to Arguments

Applicant's arguments filed 07/25/2011 have been fully considered but they are not persuasive.

On page 8 applicant argues:

> First, page 45, column 2, paragraph 2 of DuBroff is not discerned as disclosing anything about "collecting data" from an unmarried couple. Specifically, the cited paragraph recites:
>
> > Such "insurance" - the family security guarantee plan - would be initiated at the time of marriage and used in the event of divorce to help provide a breathing period for both spouses to work out the future. Through periodic payments made over the course of the first few years after divorce, it would provide temporary minimal child support. It could insure our children from becoming public charges, save our unemployable divorcees from hasty remarriages, keep our middle income marriage casualties from the poverty rolls. Further, it could protect our guilt-ridden fathers from avoiding the children because of delinquent payments. It could eliminate the family court support and non-support hostilities that cause relationships of an entire family - including the children - to deteriorate. It could even help the father who gets custody of the children and must provide household care while he works.
>
> Clarification is thus respectfully requested as to the Office's citations.

According to DuBroff, insurance is provided to spouses through periodic payments. This is a form of "collecting data" because a payment suggests a monetary amount from a source. This represents at least two form of "data" to be collected.

On page 8 applicant argues:

> Second, page 47, columns 2-3 of DuBroff do not appear to relate to "calculating various data required for insurance". Specifically, the cited paragraph recites:
>
> > As I've shown, the need for some type of divorce insurance is acute. Divorce insurance, family support insurance, child welfare insurance - whatever you like to call it - is an idea whose time has come. It's now up to the actuaries, the insurance plan executives, the bankers and the far the sighted lawyers among us who are concerned with helping families - even divorced families - live in continuity, dignity and security. It's up to us to press for a workable plan.
>
> Clarification is thus respectfully requested as to the Office's citations.

DuBroff suggests that actuaries, insurance plan executives, bankers, and lawyers to implement an insurance policy as described by DuBroff previously.

This teaching is considered to be “calculating various data required for insurance” because one of ordinary skill in the art would recognize that at least actuaries would perform the calculations required to implement an insurance policy.

Applicant’s argument on the bottom of page 8 to the middle of page 10 is directed towards proposed amendments that are denied entry.

On page 10-11 Applicant argues:

Second, as previously argued during the prosecution hereof, the applicants respectfully submit that the divorce insurance policy aspect of DuBroff "pays out" child support or maintenance payments, not the specifically identified items of claim 9. DuBroff's divorce insurance policy is provided as "a way of insuring that children of divorce will get at least minimal monetary support" (DuBroff, p. 16) by "creat[ing] a fund that would cushion child support payments provide temporary maintenance until both spouses are fully self-supporting" (Id., p. 45, col. 2, 1st paragraph). Specifically the "insurance" of DuBroff

> "provide[s] temporary minimal child support. It could insure our children from becoming public charges, save our unemployable divorcees from hasty remarriages, keep our middle-income marriage casualties from the poverty rolls. Further it could protect our guilt-ridden father from avoiding the children because of delinquent payments. It could eliminate the family court support and non-support hostilities that cause relationships of an entire family – including the children – to deteriorate. It could even help the father who gets custody of the children and must provide household care while he works."

(Id., col. 2, first full paragraph, emphasis added).

This is confirmed later on in DuBroff where it is stated that

> If the [divorce insurance policy] were made mandatory for all married people (or all [married people] who have children), it could be administered like social security, with painless deductions taken from each applicable wage-earner's paycheck. (Thus, when both husband and wife work, both would be expected to contribute – a factor which should make such an insurance policy even more palatable.)

(Id., p. 46, col. 3, 2nd full paragraph, emphasis added).

Why would a married couple who do not have children want to pay the child support insurance of DuBroff?

And further, DuBroff points out that

> Actually, a rider can even now be attached to any existing life insurance policy stipulating that its cash surrender value be paid, in the event of a divorce, over a limited time period and solely for child support. A stipulation could be made in the rider that the payments be distributed only to the custodial parent, or to a guardian named in the rider or appointed by the court in the event of divorce.

(Id., p. 46, col. 3, last paragraph, emphasis added).

Not only is this "solely for child support", but one only pays the child support payments to the children's guardian.

While Examiner agrees that DuBroff would not provide payout for divorced couples who do not have children, Applicant's claim does not exclude the embodiments wherein the couples do have children.

Therefore, the married with children embodiment is fully enveloped by the scope of the claim, and is suggested by the applied art.

On page 11-12 Applicant argues:

> According to the Office (Office action, p. 4),
>
> DuBroff does not explicitly teach:
>
> wherein the two or more natural persons entering into a cohabitation agreement are unmarried.
>
> But, the Office found that DuBroff teaches providing the insurance coverage to unmarried people who have children citing page 46, column 3, paragraph 2. The applicants respectfully disagree with this interpretation of the reference and finding. The cited paragraph in its entirety is as follows:

> If the [divorce insurance policy] were made mandatory for all married people (or all who have children), it could be administered like social security, with painless deductions taken from each applicable wage-earner's paycheck. (Thus, when both husband and wife work, both would be expected to contribute -- a factor which should make such an insurance policy even more palatable.)

(Id., p. 46, col. 3, 2nd full paragraph, emphasis added).

It is respectfully contended that reading this paragraph "as a whole," the only reasonable interpretation is that DuBroff was stating that the divorce insurance policy should be mandatory for at least "all [married people] who have children." The previous "all" referred specifically to "all married people". The rest of the paragraph specifically talks about husbands and wives, who are by definition married. See, MPEP § 2141.02(VI) ("A prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention.") (Emphasis in original).

The Office then finds that Golden teaches providing coverage to unmarried couples, citing page 2, paragraph 17. As the finding is understood, the applicants respectfully disagree. As previously discussed during the prosecution of the instant application however, Golden is directed actually to "legal insurance" that happens to cover the legal fees associated with divorce (see, e.g., page 2, ¶¶ 11-15 of Golden). There is no disclosure in Golden of coverage of "financial consequences comprise, in addition to legal fees, financial consequences selected from the group consisting of moving costs, a former partner's education, health insurance premiums, life insurance premiums, and combinations of any thereof.)

It appears that Applicant is arguing that the applied art do not teach providing coverage to "unmarried" couples, Examiner hereby clarifies the record.

The recited "two… persons entering into a cohabitation agreement are unmarried", Examiner considers that the persons are unmarried before entering the "cohabitation agreement" because this "cohabitation agreement" is marriage. Once entered into the "cohabitation agreement", they are married.

Therefore, insurance could be provided to single people before they are married.

It is noted that the claim does not exclude the couples from being married while being in the “cohabitation agreement”, wherein the previously denied entry amendment notwithstanding.

Applicant’s argument on the bottom of page 12 to the top of page 13 is directed towards proposed amendments that are denied entry.

On page 13 Applicant argues:

> On page 5 of the Office action, it was found that "DuBroff further teaches providing monetary payments for any use (page 45 column 2 paragraph 2)." The applicants respectfully disagree. As previously identified, the cited paragraph reads as follows:
>
> > Such "insurance" - the family security guarantee plan - would be initiated at the time of marriage and used in the event of divorce to help provide a breathing period for both spouses to work out the future. Through periodic payments made over the course of the first few years after divorce, it would provide temporary minimal child support. It could insure our children from becoming public charges, save our unemployable divorcees from hasty remarriages, keep our middle income marriage casualties from the poverty rolls. Further, it could protect our guilt-ridden fathers from avoiding the children because of delinquent payments. It could eliminate the family court support and non-support hostilities that cause relationships of an entire family - including the children - to deteriorate. It could even help the father who gets custody of the children and must provide household care while he works.
>
> As applicants read the cited paragraph, it is pretty squarely directed to child support issues, not the specific elements of claim 9. Clarification is thus requested.

This portion of DuBroff suggests that the spouses could use the payout to substitute for monetary settlements typically decided during family court. It is well known that family court decides a variety of financial issues regarding the marriage and dissolution thereafter.

While DuBroff only provides exemplary embodiments of such types of decisions, one of ordinary skill in the art would recognize that other issues regarding custody and other family issues are decided in family court, and the payout could be use to substitute for these court decisions.

Applicant's argument on the bottom of page 13 to the middle of page 14 is directed towards proposed amendments that are denied entry.

On page 15-17 Applicant merely rehashes arguments previously addressed above, and incorporated herein.

On page 18 Applicant further argues that the applied art do not teach the recited "financial consequences".

As previously discussed above, it is known that family court decides a myriad of financial issues for the divorce, including custody and payments therefor.

As such, similar rationale as discussed above applies, and is incorporated herein.

On page 19 Applicant argues:

> Grande is still after the fact triage, not prophylaxis for the event as is envisioned by the applicants' claim 12. Furthermore, Grande discloses that "a separate [health insurance] policy for the spouse will have to be obtained." And, "if the employee continues on his group plan and has to buy single coverage for the spouse, the cost of double coverage will be very high." Similar problems are identified for life insurance. These exact problems however are addressed and overcome by applicants' claimed invention.

Examiner is unable to understand Applicant's argument.

Claim 12 requires that during an "ending" of a "contractual relationship", "financial consequences" are paid, including "legal fees", as well as other recited forms of "financial consequences".

As discussed above, DuBroff suggests that the insurance be used to pay for decisions usually decided by family court. As discussed above, these issues may involve many types of financial issues.

Grande specifically teaches that health and life insurance premiums must be paid as part of a divorce settlement (page 652-653).

Therefore, one of ordinary skill in the art would be able to use the payouts of DuBroff in combination with the secondary references to pay for legal fees and other fees as part of a divorce settlement, wherein custodial child support is known to be one type of fees.

While Applicant appears to assert the advantage of reducing health premiums, it is not apparent from claim 12 how a simple policy that payouts for the financial consequences could be used to reduce any health premiums that are assessed independently of any marriage insurance.

Does Applicant intend to argue that the premiums are more affordable because the policy payout makes the premium more affordable by paying for at least a part of the premium? Additional clarification is requested.

On page 19 Applicant argues:

> The Office's argument is that if one were to first supplement DuBroff beyond what it reasonably discloses, then combine the "supplemented" disclosure of DuBroff with Golden (to provide legal fee coverage), then expand that combined and supplemented coverage with Grande, and computerize the whole thing as per Roberts, one would arrive at the method of claim 12. The applicants respectfully disagree, and submit that such a combination could only be put together with impermissible hindsight.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In this case, no portion of the specification is relied on for the ground of rejection.

On page 19 Applicant argues:

> The Office argues that the reason for doing so would be to provide health and life insurance coverage to divorced people. However, as shown by Grande, such is already done by way of a divorce decree. Thus, no reason existed to combine the references as done by the Office in this rejection.

As discussed above with respect to DuBroff, custody and child support are also typically paid for by divorce decree as decided by family court. In Grande, health and life coverage are simply another form of fees typically paid by divorce decree.

The problem explicitly recognized by DuBroff is that divorced people simply do not have money to pay for the divorce decree. Therefore, DuBroff provides socially responsible insurance to help pay for at least a portion of fees that were previously paid for by divorce decree (page 45 column 2).

On page 19 Applicant argues:

> The Office found that "As per claim 1, DuBroff suggests providing payouts to people who are married or have children (page 46 column 3 paragraph 2)." (Office action, p. 8). The applicants respectfully disagree and dispute this finding. Such payouts of DuBroff are to the custodial parent after a divorce and the payments provide for the support and maintenance of the children of the divorced couple. DuBroff, supra.

This is found explicitly in DuBroff (page 46):

> If the program were made mandatory for all married people (or all who have children), it could even be administered like social security, with painless deductions taken from each applicable wage-earner's paycheck. (Thus, when both husband and wife work, both would be expected to contribute—a factor which should make such an insurance policy even more palatable.)

Clearly, DuBroff intends to apply the insurance program to: (a) married people, or (b) all people who have children.

The grammar of this section does not suggest that unmarried people with children would be excluded from the program.

Even assuming *arguendo* that DuBroff only teaches people with children, this teaching is sufficient to meet the limitations of claim 1.

On page 19 Applicant argues:

> The Office found that "Golden also teaches a married couple (reads on "living together") (paragraph 15). Gold[en] further explicitly teaches providing coverage to cohabiting couples (page 2 paragraph 17)." (Office Action, p. 8). The applicants respectfully disagree and dispute this finding to the extent it goes beyond Golden being directed to legal insurance that happens to cover the legal fees associated with an incident, such as a divorce.

Examiner cannot interpret Applicant's argument regarding "to the extent it goes beyond Golden being directed to legal insurance…". Additional clarification is requested.

Examiner assumes *arguendo* that Applicant is arguing that Golden does not teach providing legal fees for divorce.

Golden teaches (page 2):

> The nation's largest provider of legal insurance, Midwest Legal Services, in Des Moines, Iowa, which administers group plans for 400 companies through a network of 9,600 lawyers, does cover divorce. According to marketing manager Ann Dieleman, Midwest's basic service only pays for uncontested divorces, but its "ultimate" plan, which costs $15 a month, covers contested ones as well. Although it is called a "family" plan, in the event of a divorce, it funds legal fees just for the

According to Golden, insurance provides payout for legal fees arising out of a divorce proceeding.

On page 20 Applicant argues:

> "DuBroff teaches combining the divorce insurance with other investment vehicles." The Office also found however that "Golden also teaches that divorce insurance is offered as part of legal insurance (reads on "another contract") (paragraph 15)." (Office action, p. 9). Applicants respectfully disagree and dispute this finding to the extent it goes beyond Golden being directed to legal insurance that happens to cover the legal fees associated with, *e.g.*, a divorce.

This argument has been addressed above, and incorporated herein.

On page 20 Applicant argues:

> Although "DuBroff teaches an annuity plan" at page 46, column 1, paragraph 1, the annuity plan described therein relates to the payout of benefits to a couple who stayed together not "investment of the periodic payments" as required by claim 7.

Applicant makes this argument without addressing what is an "investment".

Examiner submits that the annuity plan is a form of “investment”.

Furthermore, the money paid by the insured is put into, i.e. "invested", the annuity plan. After a period of no divorce, this annuity plan is paid out to couples who do not divorce.

On page 20 Applicant argues:

> Although "DuBroff teaches paying the divorced partner", that would appear irrelevant as to the "prospective participant" of claim 8.

As discussed above and identified by Applicant, DuBroff can offer insurance to newly weds. On page 45 DuBroff explicitly teaches:

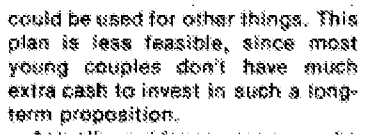
> Such "insurance"—the family security guarantee plan—would be initiated at the time of marriage and used in the event of divorce to help

According to DuBroff, the plan would be initiated at the time of marriage. Therefore, this teaching suggests that the plan is instituted at least some time prior to marriage. During this period, the couple is considered to be “prospective participant”.

On page 20-21 Applicant argues:

> The Office goes on to find however that "DuBroff recognizes that young people may not have money (page 46 column 3 paragraph 5)." (Id.) The applicants respectfully disagree with and dispute this finding. The applicants have read the cited portion and could find no such assertion. Clarification is requested.

DuBroff teaches:


could be used for other things. This plan is less feasible, since most young couples don't have much extra cash to invest in such a long-term proposition.

One of ordinary skill in the art understands that young couples do not have money for long term investments, such as the 20 year investment outline by DuBroff. Additionally, it is quite clear that young people in general do not have much money to invest in anything.

On page 21 Applicant argues:

> The applicants dispute that this "(reads on "projected earnings") (paragraph 19)." (Id.) Such coverage, on it face, would specifically relate only to past earnings, which is clearly distinguished by claims 14 and 15, which relate to projected (*i.e.*, **future**) earnings of the participant(s).

Golden teaches:

> Other countries are testing the divorce-insurance waters. In Russia, couples can sign up for it on their wedding day. It has been proposed in Great Britain, where the government bears the legal expense for poor people who divorce. (In the United States, divorce litigants are not entitled to publicly funded lawyers.)

According to Golden, Russia provides divorce insurance on the wedding day. In the UK, poor divorced people are provided legal fees.

This teaching suggests providing poor people divorce insurance on their wedding day because poor people may not have money in the future to pay for divorce fees, and fully meets the claimed limitations.

On page 21 Applicant argues:

> With respect to claim 16, while the applicants agree (again while preserving the reservations identified herein) that "DuBroff teaches adjusting the premium after 5 years of marriage," the applicants dispute that such disclosure (reads on 'changed circumstances in that natural person's life')." (Office action, p. 11). As stated in the specification, such changed circumstances originate from the income or health of the participant. See, e.g., as-filed Specification, ¶ [0022] ("The amount charged a participant can be changed in view of changed circumstances in the lifestyle (e.g., income or health) of the participant. Other changed circumstances include inflation, deflation, educational achievement of the participant or the participant's spouse, birth of a child, death of a child, disability of a participant, disability of a spouse, return on investment of investments made with the periodic amounts, and any combination thereof.") See, also dependent claim 17.

As per claim 16, Applicant does not limit the "changed circumstances" to any particular embodiment. Accordingly, the marriage status of being married more than 5 years fully meets the limitation.

As per claim 17, this claim is rejected with Covert, which Applicant does not address.

On page 22 Applicant argues:

> The Office asserts that "Golden teaches a $15 monthly premium (page 2 paragraph 15)." Applicants respectfully disagree and dispute this finding to the extent it goes beyond Golden being directed to legal insurance that happens to cover the legal fees associated with, e.g., a divorce.

Examiner cannot interpret Applicant's argument. Additional clarification is requested.

On page 22 Applicant argues:

> Although "DuBroff teaches an annuity plan," the annuity plan described therein relates to the payout of benefits to a couple who stayed together; not investing the periodic payments as part of administering the program as required by claim 19. Withdrawal of the rejection is thus requested.

As discussed above, the annuity plan invests the premium paid by the insured, and incorporated herein.

On page 22 Applicant argues:

> The Office asserts however that "Covert teaches providing insurance for the disability of a person (page 2, paragraph 0036)," and that "At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the teachings of Covert within the embodiment of DuBroff, Roberts, Golden, and Grande with the motivation of tailoring premiums to the characteristics of the participant."
>
> Again, no reason for the combination appears to be set forth by the Office. Golden is not even as cited by the Office. The proposed combination itself could only be put together as a result of impermissible hindsight. The rejection should be withdrawn.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

As discussed by Applicant, the motivation to combine is explicitly provided.

Regarding Golden not being as cited, additional clarification is requested because Examiner cannot determine from Applicant's argument what is lacking from Golden.

Conclusion

In view of the totality of the evidence, the finality of the previous office Action is hereby maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tran (Ken) N. Nguyen whose telephone number is 571-270-1310. The examiner can normally be reached on Monday - Friday, 9:00 am - 5:00 pm Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Morgan can be reached on 571-272-6773. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/TN/

Examiner, Art Unit 3626

/Robert Morgan/

Supervisory Patent Examiner, Art Unit 3626